HOUSE BILL No. 1399

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1.

Synopsis: Hoosier homefield advantage investment tax credit. Establishes the Hoosier homefield advantage investment tax credit for businesses that have operations in Indiana that make a qualified investment to foster jobs and higher wages at a location in Indiana.

Effective: July 1, 2002.

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January 15, 2002, read first time and referred to Committee on Ways and Means.

Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

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HOUSE BILL No. 1399

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-13-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 12. (a) The economic development for a growing economy board is established. The board consists of the following seven (7) members:

(1) The director or, upon the director's designation, the executive director of the department of commerce.

(2) The director of the budget agency.

(3) The commissioner of the department of state revenue.

(4) Four (4) members appointed by the governor, not more than two (2) of whom may be members of the same political party.

(b) The director shall serve as chairperson of the board. Four (4) members of the board constitute a quorum to transact and vote on the business of the board.

(c) The department of commerce shall assist the board in carrying out the board's duties under this chapter **and IC 6-3.1-24.**

SECTION 2. IC 6-3.1-13-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 26. (a) The economic development for a growing economy fund is established to be used exclusively for the purposes of this chapter **and IC 6-3.1-24,** including paying for the costs of administering this chapter **and IC 6-3.1-24.** The fund shall be administered by the department of commerce.

(b) The fund consists of collected fees, appropriations from the general assembly, and gifts and grants to the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) The money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for the purposes of this chapter. Expenditures from the fund are subject to appropriation by the general assembly and approval by the budget agency.

SECTION 3. IC 6-3.1-24 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 24. Hoosier Homefield Advantage Investment Tax Credit

Sec. 1. As used in this chapter, "board" has the meaning set forth in IC 6-3.1-13-1.

Sec. 2. As used in this chapter, "director" has the meaning set forth in IC 6-3.1-13-3.

Sec. 3. As used in this chapter, "full-time employee" has the meaning set forth in IC 6-3.1-13-4.

Sec. 4. As used in this chapter, "new employee" has the meaning set forth in IC 6-3.1-13-6.

Sec. 5. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) trust;

(4) limited liability company; or

(5) limited liability partnership.

Sec. 6. (a) As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures for:

(1) the purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing equipment;

(2) the purchase of new computers and related equipment;

(3) costs associated with the modernization of existing

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telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;

(4) onsite infrastructure improvements;

(5) the construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;

(6) costs associated with retooling existing machinery and equipment; and

(7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry;

that are certified by the board under this chapter as being eligible for the credit under this chapter.

(b) The term does not include property that can be readily moved outside Indiana.

Sec. 7. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-2.1 (the gross income tax);

(2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(3) IC 6-3-8 (the supplemental net income tax);

(4) IC 6-5-10 (the bank tax);

(5) IC 6-5-11 (the savings and loan association tax);

(6) IC 27-1-18-2 (the insurance premiums tax); and

(7) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 8. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or other entity that has state tax liability.

Sec. 9. The board may make credit awards under this chapter to foster job creation and higher wages in Indiana.

Sec. 10. A taxpayer that:

(1) is awarded a tax credit under this chapter by the board; and

(2) complies with the conditions set forth in this chapter and the agreement entered into by the board and the taxpayer under this chapter;

is entitled to a credit against the taxpayer's state tax liability in a taxable year.

Sec. 11. The amount of the tax credit is equal to the lesser of the

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following:

(1) Three percent (3%) of the amount of the qualified investment made by the taxpayer in Indiana.

(2) The difference between the taxpayer's state tax liability in the taxable year and the taxpayer's state tax liability in the taxable year immediately preceding the taxable year in which the taxpayer made the qualified investment.

Sec. 12. The taxpayer is entitled to claim the tax credit in each of ten (10) consecutive taxable years beginning with the taxable year in which the taxpayer makes the qualified investment. If the amount of a credit for a particular taxpayer in a particular taxable year exceeds the taxpayer's state tax liability for the taxable year, the taxpayer may carry forward the unused part of the tax credit to subsequent taxable years.

Sec. 13. If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

An unused tax credit granted under this chapter is not refundable and may not be carried forward.

Sec. 14. A person that proposes a project to create new jobs or increase wage levels in Indiana may apply to the board before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The director shall prescribe the form of the application.

Sec. 15. After receipt of an application, the board may enter into an agreement with the applicant for a credit under this chapter if the board determines that all of the following conditions exist:

(1) The applicant has conducted business in Indiana for at least one (1) year immediately preceding the date that the application is received.

(2) The applicant's project will raise the total earnings of employees of the applicant in Indiana.

(3) The applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment and strengthening the economy of Indiana.

(4) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project and not receiving the

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tax credit will result in the applicant not raising the total earnings of employees in Indiana.

(5) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(6) The credit is not prohibited by section 16 of this chapter.

(7) The average wage that will be paid by the taxpayer at the location after the credit is given will be at least equal to one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

Sec. 16. A person is not entitled to claim the credit provided by this chapter for any jobs that the person relocates from one (1) site in Indiana to another site in Indiana. Determinations under this section shall be made by the board.

Sec. 17. The board shall certify the amount of the qualified investment that is eligible for a credit under this chapter. In determining the credit amount that should be awarded, the board shall grant a credit only for the amount of the qualified investment that is directly related to expanding the workforce in Indiana.

Sec. 18. The board shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The first taxable year for which the credit may be claimed.

(3) The amount of the taxpayer's state tax liability for each tax in the taxable year of the taxpayer that immediately preceded the first taxable year in which the credit may be claimed.

(4) The maximum tax credit amount that will be allowed for each taxable year.

(5) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.

(6) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.

(7) A requirement that the taxpayer shall annually report to the board the number of new employees who are performing jobs not previously performed by an employee, the average wage of the new employees, and the average wage of all employees at the location where the qualified investment is

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made, and any other information the director needs to perform the director's duties under this chapter.

(8) A requirement that the director is authorized to verify with the appropriate state agencies the amounts reported under subdivision (7), and after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(9) A requirement that the taxpayer shall pay an average wage to all of its employees (excluding officers, partners, and shareholders) in each taxable year that a tax credit is available that equals at least one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(10) A requirement that the taxpayer will keep the qualified investment property that is the basis for the tax credit in Indiana for at least the lesser of its useful life for federal income tax purposes or ten (10) years.

(11) A requirement that the taxpayer will maintain at the location where the qualified investment is made during the term of the tax credit a total payroll that is at least equal to the payroll level that existed before the qualified investment was made.

(12) A requirement that the taxpayer shall provide written notification to the director and the board not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(13) Any other performance conditions that the board determines are appropriate.

Sec. 19. A taxpayer claiming a credit under this chapter shall submit to the department of state revenue a copy of the director's certificate of verification under this chapter for the taxable year. However, failure to submit a copy of the certificate does not invalidate a claim for a credit.

Sec. 20. If the director determines that a taxpayer who has received a credit under this chapter is not complying with the requirements of the tax credit agreement or all of the provisions of this chapter, the director shall, after giving the taxpayer an opportunity to explain the noncompliance, notify the department of commerce and the department of state revenue of the noncompliance and request an assessment. The department of state revenue, with the assistance of the director, shall state the amount

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of the assessment, which may not exceed the sum of any previously allowed credits under this chapter. After receiving the notice, the department of state revenue shall make an assessment against the taxpayer under IC 6-8.1.

Sec. 21. On or before March 31 each year, the director shall submit a report to the board on the tax credit program under this chapter. The report must include information on the number of agreements that were entered into under this chapter during the preceding calendar year, a description of the project that is the subject of each agreement, an update on the status of projects under agreements entered into before the preceding calendar year, and the sum of the credits awarded under this chapter. A copy of the report shall be delivered to the executive director of the legislative services agency for distribution to the members of the general assembly.

Sec. 22. On a biennial basis, the board shall provide for an evaluation of the tax credit program, giving first priority to using the Indiana economic development council, established under IC 4-3-14-4. The evaluation shall include an assessment of the effectiveness of the program in creating new jobs and increasing wages in Indiana and of the revenue impact of the program and may include a review of the practices and experiences of other states with similar programs. The director shall submit a report on the evaluation to the governor, the president pro tempore of the senate, and the speaker of the house of representatives after June 30 and before November 1 in each odd-numbered year.

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